IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 530 of 2003

in

SPECIAL CIVIL APPLICATION No 95 of 1992
with

CIVIL APPLICATION NO.3178 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SIPU PROJECT EMPLOYEES ASSOCIATION

Appearance:
GOVERNMENT PLEADER for Appellant
MR SAURABH J MEHTA for Respondent No. 1

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: 24/06/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

Admit. Service of notice is waived by learned advocate Mr.Saurabh J. Mehta for the respondent. Upon joint request, this Letters Patent Appeal is taken up for final hearing today itself.

The core issue in focus in this Letters Patent Appeal under clause 15 of the Letters Patent Appeal has been as to whether the employees of Sipu Project and members of the Sipu Project Employees Association, respondent herein, are eligible and qualified for project allowance or not, to which the learned single Judge has, upon consideration of the facts and circumstances, adjudicated and decided in favour of the respondent, original petitioner and, therefore, this Letters Patent Appeal, at the instance of the State of Gujarat.

We have heard the learned advocates appearing for the parties dispassionately and we have scanned and scrutinised the material documentary evidence on record and the relevant and material resolutions of the Government on the issue, coupled with the text, texture and tenor of the impugned judgment of the learned single Judge rendered on 26.7.2002 in Special Civil Application No.95 of 1992, whereby, the petition came to be allowed granting project allowance in terms of the Government resolution dated 27.12.88 after adjusting the amount of project allowance that has already been paid to the members of the original petitioner-association, with further direction to the respondents to continue to implement the said GR till Sipu Project remains in existence.

It may be stated, at the outset, before we advert to the merits of the appeal and the challenge against it, in greater detail, that there is always a purpose and policy behind the grant of certain special allowances in the Government employment. The amenities to the staff employed on the Project initially came to be articulated by general circular dated 5th May 1966. Projects of the Government, at times, are at far off places away from the Urban and sometimes rural amenities and facilities. With a view, therefore, to offer incentives for effective and efficient service, amenities to the staff employed on

such projects are provided by the Government in one or other form since it is not only logical, but rational and is aiming at having sufficient, efficient and disciplined staff for the purpose of project on hand who are away from city life, and at times, from the country life. Probably this idea appears to be global. Even in case of United States, persons who are employed in Alaska are given and paid, reportedly, very high salaries and are provided with higher and greater facilities. Be that as it may. We are, in this Letters Patent Appeal, concerned with the entitlement of project allowance referable to the staff employed in Sipu Project at Dantiwada in the State of Gujarat.

Initially, in order to have a uniform procedure of providing amenities to the staff working on the various irrigation projects, various guidelines and proposals affording amenities came to be approved in the circular dated 5th May, 1966. It was further reviewed by resolution of the Government of Gujarat in Public Works Department, dated 16th May, 1972. It appears that one another resolution of the Government in this connection was dated 19th August 1971, which is not placed on record, but which is referable to such allowance and amenities since it is referred in the subsequent resolution of the Government dated 16th May, 1972. Further revision, also, took place and it is evident from the Government resolution dated 29th December 1990. It appears that before that, the project allowance issue was also reconsidered and reviewed by the Government by resolution dated 21st May, 1988.

Pursuant to the resolution dated 29th December 1990 in modification of the resolution regarding project allowance dated 21st May, 1988, the members of the petitioner Association claimed project allowance, who are residing at Project site of Sipu Project, failing which, they initiated legal battle by filing aforesaid writ petition under Article 226 of the Constitution of India seeking direction to the authorities (original-respondents) to immediately pay Project Allowance with arrears from 1.5.88 with further direction to give project allowance upto 31.3.93 and thereafter also not to discontinue the amenities which are being continued to be given to some members of the petitioner-Association.

The historical background of the Sipu project, the distance from the city, availability of certain amenities and facilities in the colony of Sipu Project and the project site are spasmodically outlined in the petition,

affidavit in reply and also in the impugned judgment, which we have considered, threadbare.

Sipu Project, as such, came to be started in the early Eighties and the members of the Petitioner Association are working from 1980. The project site colony was established in the year 1984. The staff members employed in the Sipu Project are also provided with residential accommodations in the Sipu colony with certain amenities. The contention of the respondent authority, from the inception, has been that the benefits emanated from the Government Resolutions in general and regarding project allowance in particular to the staff employed on the Sipu Project will not be available to the members of the petitioner-Association who are, as such working or residing in the Sipu Colony. Again it is, also the case of the respondent authority that on the basis of Government resolution dated 21.5.88, the staff members of the Sipu Project have been allowed to opt either to take project allowance or the amenities mentioned in the aforesaid resolution as the allowance is intended to primarily compensate the staff members for not enjoying the amenities and facilities, such as, housing, schools, dispensaries, libraries, market place, etc. It is not an allowance meant for those staff members who are either in the administration or in the residential accommodation in the colony of the Sipu Project as reasonable amenities have already been arranged and provided there. In this context, the opposition of the respondent authorities to the grant of project allowance to the members of the petitioner-Association has been that there would be no justification for the project allowance since they are already availing the benefits of reasonable amenities and facilities provided by the Government in the Sipu Colony. It is also the plea raised by the respondent authorities that even if the Project is located at a farther distance or is located at a distant place from city, in that case, the staff employed on such project is being provided with compensatory city allowance and/or house rent allowance or any other compensatory allowance which is admissible and, therefore, specially designed project allowance and meant for defined class of employees having not enjoying the facilities and amenities cannot be granted for the members of the petitioner Association. In sum and substance, the project allowance entitlement will be circumscribed to the staff members of the Sipu Project who reside within the project area or in the nearby locality and the main design and purpose of grant of project allowance is to see that the non-enjoyment and non-availability of certain amenities and facilities to the members of the staff employed on project is

compensated by the devised and designed scheme of grant of project allowance.

It will be material and interesting to state that the members of the original-petitioner Association who are residing or working within the precincts and premises of Sipu Colony meant for Sipu Project have been provided with the facilities of residential accommodation and in absence thereof, house rent allowance and other basic amenities like, dispensaries, post office, etc. which are not available and provided on the project. It is in this context, the claim of the members of the petitioner-Association for the grant of Project allowance, who are already availing the facilities in the Sipu colony meant for Sipu Project cannot be said to be covered by the resolution and, therefore, not justified. The obvious and plain interpretation, meaning, application and the substance of the resolution of the Government providing grant of project allowance cannot be claimed by those staff members who are already availing the facilities in lieu of which the project allowance is granted. The members of the petitioner Association who are already in enjoyment of such facilities, obviously, therefore, would not be entitled to claim project allowance which is only available and given in lieu of such facilities. It is, also, very clear from the resolution dated 21st May, 1988 which is referable to the grant of project allowance that the same will be available and admissible only to such staff as are employed on the project and reside within the project area or in a nearby locality. The allowance may also be granted to such State Government staff or other departments as have their offices located in the project area for the work of project provided they reside within the project area or nearby locality. The term "project area" will be the area defined as such by the Government in respect of each project for which the project allowance is sanctioned. It will be, also, interesting to mention at this stage that even provision has been made in the resolution of the Government that as an exception, the allowance may also be granted to an employee residing outside the project area if he has to reside outside the project area due to non-availability of residential accommodation in the area and not because such an arrangement is more convenient to him, and if no facility of free or subsidised transport is available to such an employee for journey to and from the project.

The resolution does stipulate in unambiguous term that the continuance of the project allowance would not be justified for the staff of the project where reasonable

amenities and facilities have been provided in the project area. It is, therefore, very clear that the direction of the learned single Judge to continue to pay the project allowance to the members of the petitioner-Association until the entire project is completed or wound up or remains in existence is not justified. The underlying design is obvious and evident that those who are unable to enjoy the benefits and amenities like their counterparts residing away from the project and enjoying the facilities should be paid such allowance with a view to neutralise the higher expenditure incurred by them for making arrangements for such facilities and it cannot be said to be a permanent scheme of grant of allowance of such a project. As and when better and higher facilities and amenities in course of time, the project goes on, have been provided to the employees or the staff of the project, it is always open for the respondent authority to reduce proportionately the amount of project allowance. In short, it is a concession as a temptation to the staff employed on the project and secondly, it is a concession for a limited period during which normal and reasonable facilities and amenities are not provided to the employees engaged in the project at the site. Therefore, it is evident that the same is a limited concession to the employees. It is not a permanent amenity as a matter of right. The learned single Judge, with due respect, has lost sight of this vital aspect and significant scheme of this policy of grant of project allowance.

After having taken into consideration the design and desideratum of the scheme of grant of project allowance, the purpose and policy of evolving the scheme of such an allowance, the availability, existence and enjoyment of normal and reasonable facilities to pursue normal avocation of life for the staff employed for the particular project which is normally located far away from city and, at times, even from the country life and the fact that it is optional, with due respect, the learned single Judge has failed to appreciate these material aspects, as a result of which the members of the petitioner-Association who are otherwise enjoying other facilities and amenities cannot be said to be entitled to draw the amount of project allowance. The view and the ultimate conclusion recorded by the learned single Judge in holding that they are entitled and qualified to claim such project allowance is, in our opinion, counter to the purpose and philosophy of the resolutions and diametrically opposite to the resolution of such a scheme of grant of such project allowance and there cannot be permanent direction of availing grant of such project

allowance till existence of the project. It is in this context, the impugned judgment is required to be interfered with in exercise of our powers under Clause 15 of the Letters Patent to put it in legal shape by quashing the same.

Consequently, this Letters Patent Appeal is allowed. The impugned judgment and order is quashed and set aside and the Special Civil Application No.95 of 1992 is dismissed leaving the parties to bear their own costs, in the circumstances of the case.

The Civil Application No.3178 of 2003 shall stand disposed of in view of the judgment in the Letters Patent Appeal.

(J.N.Bhatt, Acting CJ)

(A.L. Dave, J.)
(vjn)